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COLUMNIST

A Strategic Error

By Carl Golden | May 17, 2019, 12:08 pm | in **Columnist**
(<https://www.insidernj.com/category/columnist/>)



Senate President Steve Sweeney's decision to put an end to any further attempts to **legalize possession** of small amounts of marijuana amounted to a mercy killing, an acknowledgement that keeping the legislation connected to life support in the belief it would magically recover was pointless and embarrassing.

If anything, his decision to punt the entire issue to a 2020 referendum was overdue. It was apparent for months that opposition had hardened, minds would not be changed and another of Gov. Phil Murphy's signature campaign issues failed to attract majority support in a Legislature controlled by his party.

Persuading a handful of Senators (three or four, according to reports) to support legalization proved beyond both the governor and Sweeney, although suggestions were plentiful that the Senate President was less than forceful in lobbying his colleagues, undismayed over the prospect of a defeat for the governor.

Characterizing Sweeney's decision as collateral damage in the war between the governor, the Senator and prominent South Jersey political figure George Norcross is a convenient cop out. The legislation was swamped in choppy waters long before the intra-party dispute broke out.

Despite broad public support for legalizing possession for personal use, approval was always problematic and was eventually doomed by a combination of deep differences of opinion over implementing it and unanticipated but strong opposition from law enforcement, members of the clergy, public health organizations and legislators who believed the idea of government-sanctioned drug use was unacceptable public policy.

The prolonged debate was marked by persistent wrangling over licensing of producers and commercial outlets, tax rates, allocation of revenue, location of sales sites, and creation of a state regulatory agency to oversee the program.

Each effort to re-write the proposal to satisfy one group led invariably to unhappiness and opposition from a different quarter.

It became a near hopeless task to produce legislation acceptable to all interested parties while convincing undecided legislators to overcome their misgivings.

Attempts to make legalization more palatable by tying it to an expansion of the state's medical marijuana program and to provide automatic expungement of criminal records for past possession convictions failed.

Both these goals could be achieved relatively easily and quickly on their own merits and making them contingent on legalization was a strategic error.

Supporters argued that legalization was a matter of eliminating unfairness in the criminal justice system which disproportionately punished minority offenders, pointing out that African-Americans are as much as three times greater than whites to be incarcerated for possession convictions despite usage being roughly equal.

Oddly, achieving the social justice goal through decriminalization rather than legalization never received serious consideration.

Decriminalization — classifying personal use possession at the same level as a traffic citation — would eliminate any criminal proceeding. No arrest, felony conviction, jail sentence or permanent record.

Under decriminalization, offenders faced with answering “Have you ever been convicted of a crime?” on a job application, for instance, could truthfully and legitimately check the “No” box.

Moreover, decriminalization is considerably more defensible than legalization and might have appealed to wavering legislators, particularly when combined with medical marijuana expansion and an expungement process.

Granted, decriminalization would not eliminate the street corner dealer nor would it produce any tax revenue. Neither does a two-year delay.

At the same time, local law enforcement agencies likely would not expend a great deal of time, energy and resources to write the equivalent of a traffic ticket.

By opting for a referendum — in essence, a public opinion poll — any move toward legalization is at least 18 months away and potentially longer.

And, there is no guarantee that even in the face of popular support, the Legislature can avoid becoming bogged down in much the same contentious arguments and potential stalemate over how to implement a legalization program.

A referendum is essentially a “yes or no” question on the ballot, leaving implementation up to the Legislature — a Legislature which will be differ hardly at all from that which couldn’t agree on the details this year. A successful referendum will change nothing; merely reinforce what is already established.

Moreover, a 2020 referendum — a date chosen to take advantage of higher voter turnout in a presidential year — will place the implementation debate in 2021, a year in which the governor and entire Legislature stand for election, a circumstance certain to exert considerable influence on the debate.

It would have been the wiser course for both the governor and legislative leadership — facing certain defeat of legalization— to regroup, re-assess their positions and opt for a decriminalization program, operate it for two years, tout its benefits and successes and take another run at legalization after the 2021 election.

It also would have obviated the need for Sweeney to commit a mercy killing.

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